

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



DEMETRIUS A. HOLMES (#1115720),

Petitioner,

v.

ACTION NO. 2:19cv427

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of Mr. Holmes's constitutional rights pertaining to his 2015 convictions in the Richmond Circuit Court for abduction, robbery and carjacking. As a result of the convictions, petitioner was sentenced to serve 40 years in prison.

The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed March 6, 2020, recommends that Mr. Holmes' petition be dismissed with prejudice for being time-barred, as he has not provided sufficient evidence to warrant equitable tolling. The Report and Recommendation advised Petitioner of his right to object and the time limit for doing so.¹ The Court has received no objections, and the time for filing objections has now expired.

¹ Holmes was transferred to another correctional facility on the same date that the original copy of the Report and Recommendation was mailed to him by the Court. Therefore, the Court mailed a second copy of the Report and Recommendation to him at his new location and re-calendared his response for an additional 14 days. Neither copy of the Report and Recommendation were returned to the court as undeliverable.

Accordingly, the Court accepts the findings and recommendations set forth in the Report and Recommendation filed March 6, 2020, and it is ORDERED that Respondent's Motion to Dismiss (ECF No. 11) is GRANTED, and the petition (ECF No. 1) is DENIED and DISMISSED with prejudice as being time-barred.

Finding that the basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk is directed to mail a copy of this Final Order to Petitioner and provide an electronic copy of the Final Order to counsel of record for Respondent.

Arenda L. Wright Allen
United States District Judge

Norfolk, Virginia

Entered: 5/13/2020